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ChevronTexaco

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Department of the Interior
Minerals Management Service
381 Elden Street, Mail Stop 4024
Herndon, Virginia 20170-4817

Attention: Rules Processing Team

**Re: RIN 1010-AD16, Oil, Gas, and Sulphur Operations and Leasing in the Outer Continental Shelf
— Cost Recovery, 70 Fed. Reg. 12,626 (March 15, 2005)**

Dear Sir or Madam:

Chevron U.S.A. Inc. (Chevron) appreciates the opportunity to comment on the Minerals Management Service's (MMS) Federal Register notice proposing to modify its regulations to change some existing fees and implement several new fees to offset MMS's costs of performing certain services related to its minerals program. Chevron is engaged in all aspects of the offshore oil and natural gas industry and is an owner of hundreds of leases found in the federal waters of the Gulf of Mexico (GOM). As a major lessee of both producing and non-producing leases in the GOM Chevron is very interested in MMS's proposal to modify its existing fee structure for processing certain documents lessees and others are required to submit to MMS for handling.

Proposed Regulation

Based on various legal authority and policy guidance documentation referenced in the Federal Register notice, MMS has concluded it is entitled to implement cost recovery procedures to reimburse MMS for costs incurred when providing services to the non-federal sector. While some of the fees discussed in the notice are modifying fees currently charged for processing certain stakeholder requests, other fees are new and being proposed to be charged for processing documents historically handled by MMS under its normal course of business at no additional cost. It is somewhat understandable MMS would charge applicants for processing Pipeline Right-of-Way (ROW) Grant applications, Pipeline Conversion of Lease Term to ROW, Pipeline ROW Assignments, Record Title/Operating Rights (Transfer), and non-required Document filings the nature of which could benefit an entity who is not an original lessee to a lease affected by the ROW, Transfer or non-required Document filing. Since the beneficiaries could possibly not have paid any lease bonus, rental or royalty for a block or lease affected by the ROW or Transfer request, cost recovery for processing these requests along with non-required document filings seems reasonable. However, to propose charging fees to lessees to process their applications or requests for Change in Designation of Operator, Suspensions of Operations/Suspensions of Production (SOO/SOP) Requests, 500 feet from Lease/Unit Line Production Requests, Gas Cap Production Requests, Downhole Commingling Requests, or Voluntary Unitization Proposals or Unit Expansions requests appears to be an unlawful violation of the leases. In all cases these applications or requests are submitted by lessees who have paid the United States government for the right to explore and develop the leases on which these requests are based along with annual rental payments and in some cases royalty. The combination of these payments sufficiently compensates the United States government both for issuing the leases and for processing the necessary paperwork required by regulations to ensure the lessees are able to enjoy the

rights and privileges they have contracted by executing the lease. Even more troubling is the fact MMS insures it receives fair market value for the leases before they are issued through its two tier compensation sufficiency determination model conducted on every high bid submitted subsequent to any given lease sale. Charging fees to lessees for processing their mandated requests after receiving fair value for issuing the lease, even if those requests are considered optional by MMS, seems unreasonable.

In our assessment the proposed rulemaking may violate the Administrative Procedure Act because it does not disclose the basis of MMS's assessment of the costs to be recovered, other than to give description of certain generic factors purportedly considered.¹ In fact, absent in the proposed rulemaking are any details concerning the costs calculated for the services from which the calculations could be audited or of any statement that an independent audit of the calculations was performed. Further, the proposed rulemaking nowhere suggests that any comparison of the costs sought to be recovered to the costs of similar services in the private sector was made. Thus, lessees are placed in the position of relying on the MMS's sole judgment as to the reasonableness of the fees charged to recover the costs purportedly incurred.

Processing Fees

Should MMS decide to implement the fee structure stated in the notice for the activities listed, it is requested that MMS consider modifying the actual text of the proposed rule in the following manner:

1. Under **Subpart A – General Fees - 250.125 Service fees, and under Subpart 256.63 Service fees**, it is suggested MMS provide detail in the first paragraph of this subsection sufficient to allow lessees to understand the methodology used to determine the fees MMS proposes to charge. We are not proposing specific language to use because we are not familiar with the methodology followed by MMS to develop the fee structure. In addition, as subsection 250.125 is written, any methodology of any sort could be used to determine the basis for cost recovery. It is suggested that MMS list the specific factors to be used in determining what costs are to be recovered by the fees charged and how the amounts of those costs are determined. By not addressing this at all, interested parties have no idea how the fee structure was created or what assumptions were used to determine the amounts MMS is attempting to recover.
2. Under **Subpart A – General Fees – 250.125 Service fees, and under Subpart 256.63 Service fees**, it is recommended MMS consider adding the following sentences to the end of this subsection. “Upon submittal of any request to process any item listed in the FY 2005 Service Fee Table, MMS will evaluate the submittal for completeness prior to processing the request and upon deeming the request complete, commence processing both the request and applicable fee. Should the request be deemed incomplete, MMS shall return both the request and fee to the submitter with an explanation of why the request was not accepted for processing.” (Note: We believe it is only fair that MMS not accept a processing fee for requests that are not processed through the system but are rejected early in the evaluation due to submittal of an incomplete request.)
3. Subsection **250.143 - How do I designate an operator?** The following sentence should be added to the end of the new paragraph (d), “Should there be multiple lessees, all designation of operator forms shall be collected by one lessee and submitted to MMS in a single submittal subject to only one filing fee.”
4. Under subsection **250.1303 entitled “How do I apply for voluntary unitization?”** it is requested MMS consider deleting the last sentence of the new paragraph (d) which reads

¹ See 70 Fed. Reg. at 12,627 (Mar. 15, 2005) (“We considered various factors in determining the proposed fee amounts. These factors included actual costs, the monetary worth of the services to the applicant, and whether the services provide a benefit to the general public.”)

“Additionally, you must pay the non-refundable service fee listed in 250.125 with your request for unitization revision and modification.” It is recommended MMS replace the last sentence in paragraph (d) with “No additional service fees will be required for requests to revise, modify or amend any unit once approved.” (Note: The proposed service fee of \$10,000 seems excessive for processing revisions, modifications or amendments to unit agreements once the original analysis conducted by MMS for the original unit application has been completed. Most revisions, modifications or amendments to approved units should not take the time to process as would the original application.)

Conclusion

As stated earlier, it is believed charging fees to process mandatory but “optional” requests from lessees seems excessive considering the bonus, rentals and potential royalties lessees pay for leases they acquire. It is our recommendation that MMS not institute the new fee structure as proposed and only continue charging fees for the ROWs, Transfers and non-required document filings as it has in the past. If MMS ultimately determines the proposed fees structure must be implemented, it is requested the actual rule be modified to address the textual issues identified above.

We again wish to express our appreciation at being given the opportunity to comment on the proposed fee structure rulemaking. Should there be any questions regarding our comments, please do not hesitate to contact me.

Yours truly,

Chevron U.S.A. Inc.

J. Keith Couvillion

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